

**United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report**

Case Number

0606-0015

Case Title:

CES Environmental Services

Reporting Office:

Houston, TX Resident Office

Subject of Report:

Meeting with OSHA on October 15, 2010.

Activity Date:

October 15, 2010

Reporting Official and Date:

(b) (6), (b) (6), SA

18-OCT-2010, Signed by: (b) (6)(b) SA

Approving Official and Date:

Ivan J. Vikin, SAC

19-OCT-2010, Approved by: Ivan J. Vikin, SAC

SYNOPSIS

10/15/2010 - A meeting with OSHA was conducted on October 15, 2010, in reference to the OSHA fatality investigation of PACES employee (b) (6), (b) (6), that occurred on December 18, 2008. Those present at the meeting were: (b) (6), (b) (7)(C) Assistant Area Director of the Houston South Area Office, OSHA, and EPA CID SA (b) (6)(b) (6), Former OSHA Safety Engineer, (b) (6)(b) (6), attended the meeting via telephone conference call.

DETAILS

On October 15, 2010, an interview was conducted at OSHA - Houston South Area Office located at 17625 El Camino Real, Suite 400, Houston, Texas, 77058. Those present at the interview were OSHA - Assistant Area Director, (b) (6), (b) (7)(C) and EPA CID SA (b) (6)(b) (6), Former OSHA Safety Engineer, (b) (6), (b) (7) joined via conference phone call.

On December 18, 2008 a fatality occurred at Port Arthur CES (PACES), located at 2420 South Gulfway Drive, Port Arthur, Texas. The fatality incident began on top of tanker trailer #267 located at the PACES facility. (b) (6), (b) (7) was originally assigned to investigate until March of 2009 at which time (b) (6), transferred to another Federal Government Agency. At the time of (b) (6), transfer the investigation was mostly complete. After (b) (6), transfer the investigation was transferred to OSHA Assistant Area Director, (b) (6), (b) (7)(C)

In the beginning of the Joey Sutter fatality investigation (b) (6), corresponded with (b) (6), (b) (7) Health, Safety and Environmental Manager (HSE Manager), CES Environmental Services Inc. (CES). CES is located at 4904 Griggs Road, Houston, Texas. Both CES and PACES are owned by (b) (6), (b) (7)(C) (b) (6), told (b) (6), that the material in trailer #267 was brought in from somewhere else.

(b) (6), later corresponded with (b) (6), (b) (7)(C) Plant Manager, PACES. (b) (6), (b) (7) explained to (b) (6), that the material inside trailer #267 was the waste from a process at PACES. The waste in trailer #267 would be shipped to another company that used it. (b) (6), could not recall if (b) (6), (b) named the company that accepted waste steam that was in trailer #267.

(b) (6), eventually concluded that the process at PACES resulted in waste water being produced. That waste water would be held in a fixed waste water tank. When that waste water tank became near capacity, PACES would empty that fixed waste water tank into tanker trucks. (b) (6), also concluded that two tankers held the same material on December 18, 2008. One trailer was #267 the other was never established by (b) (6),

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PACES did provide analytical data from a sample tested by Chemtex Lab located in Port Arthur, Texas. A split of the sample had been kept at the PACES lab. (b) (6), (b) (7) Plant Manager, PACES, called (b) (6), via telephone and described the split sample as a sample taken on December 18, 2008. (b) (6), (b) later gave (b) (6), the split sample from the PACES lab. (b) (6), (b) signed an OSHA chain of custody describing the evidence and the date the evidence was taken, please refer to attachment #1. Attachment #1 is the chain of custody sheet and analysis results for the sample received from (b) (6), (b) (7)(C)

At a later date CES requested an informal hearing at OSHA - Houston South Area Office. OSHA was told by (b) (6), (b) (7)(C) speaking for CES/PACES that the sample (b) (6), (b) (7)(C) had taken was from December 17, 2008 and not December 18, 2008. (b) (6), based his argument of a notarized written statement from (b) (6), (b) (7)(C) (b) (6), stated that the dates on the Chemtex Lab paperwork that listed the sample taken on December 18, 2009 must be a typographical error.

(b) (6), told OSHA during the informal hearing that there had been two samples taken from trailer #267. One on December 17, 2008 and the other on December 18, 2008. (b) (6), did not produce two sets of analytical results but pointed to the Chemtex Lab paperwork with a listed sample date as December 18, 2008, as the results for both samples.

(b) (6), had requested that (b) (6), (b) (7) for Sutter's H2S monitor. The H2S monitor was not produced by (b) (6), (b)

On February 13, 2009 a subpoena was served on Matt (b) (6), (b) please see attachment #2. The information listed as item #25 was not provided until months later (at least not provided by July 07, 2010). The response for item #25 is also in attachment #2.

Attachment #3 is title Joey Sutter Incident Report above the date December 18, 2008. The pre-incident describes the material in trailer #267 as the oil from an emulsion breaking process. Please see attachment #3.

Attachment #4 is the PACES, RCRA exemption declarations made to OSHA. Please see attachment #4.

OSHA Assistant Area Director - (b) (6), (b) (7)(C) had reviewed the accident recording history of PACES. Work related accidents are required to be recorded on an OSHA 300 Log Form by the person that has been appointed by Management to record those accidents. The accident that involved PACES Driver, (b) (6), (b) (7)(C) that occurred in November 2008 had not been recorded. OSHA had issued PACES citation for that failure to record.

ATTACHMENT

attachment #1
attachment #2
attachment #3
attachment #4

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